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Case No. _____

In The
Supreme Court of the United States
October Term, 1998

OFIK NAZARYAN and
HENRIK DILANIAN,
Petitioners,

vs.

JAMES R. SIMPSON and
DONA BRACKE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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103 pp

QUESTIONS PRESENTED

1. Do State court bench officers have judicial immunity for *intentional* violations of litigants' *clear Constitutional and legal rights*, such as a jury trial?

2. Does a bench officer who "completely lacks jurisdiction" act in the "complete absence of all jurisdiction", so as to lose any judicial immunity?

3. Is a state's interest in *processing* court cases a sufficient state interest under *Younger* abstention to bar federal court 42 USC §1983 *Pulliam* relief?

4. Does a 42 USC §1983 action directed *solely* to Due Process violations by state judges, and *not* to the merits of the state action, lack subject matter jurisdiction as an improper collateral attack?

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OPINIONS BELOW

The District Court of Central California in Case #CV-97-04734-WJR [Hon. William J. Rea] order and judgment are in Appendix A1. The order granting relief to file a late appeal was entered on December 23, 1997 [Appendix A2].

The opinion of the Ninth Circuit Court of Appeals in Case #97-56591 is in Appendix A3.

Neither decision is reported.

BASIS FOR JURISDICTION

The Memorandum of the Court of Appeals was entered on October 26, 1998. Jurisdiction is invoked under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

US. Constitution, 14th Amendment, section (5)

42 USC §1983

Federal Rules of Appellate Procedure, Rule 4(a)

California Constitution Art. 1, §16

California Code of Civil Procedure § 1161(5)

California Code of Civil Procedure § 1171

California Code of Civil Procedure § 631(5)

California Constitution Art. 6 §21

California Government Code § 69511.3

California Rules of Court, Rule 985

- All of the above are contained in Appendix A4 -

STATEMENT OF THE CASE

Basis of Federal Jurisdiction in the First Instance

The federal action arises under the United States Constitution's 14th Amendment and under 42 U.S.C. §1983, as a federal civil rights action, raising federal questions under 28 U.S.C. 1331.

In particular, the action raises questions whether state bench officers are personally liable in damages and subject to injunctive relief in a federal court where they intentionally violate litigants' constitutional, legal, and civil rights and/or where they act completely without jurisdiction.

Factual Summary

Petitioners are indigent Russian Armenian

immigrants who were named as defendants in an unlawful detainer action by plaintiff Sammi Marcos, the landlord, Glendale Municipal Court Case #97C00724, *Marcos v. Nazaryan*. Respondent Dona Bracke was a commissioner in that Court, and Respondent James R. Simpson was the presiding judge, responsible for supervising and correcting Commissioner Bracke under California Rules of Court Appendix, Standards of Judicial Administration, §16. Bracke was eventually fired from her job as the court's commissioner by Simpson in December 1998 after other misconduct by Bracke gained local adverse publicity. Simpson is still on the bench at that courthouse.

The dispute originated over a burst water pipe

in an apartment in Glendale, which filled a wall with water. The wall collapsed, flooding the apartment, and rendering it uninhabitable. Marcos failed to correct the problem and Petitioners exercised their right under California law to repair and deduct, [California Civil Code §1942] spending within the limits after giving due notice. Marcos refused to permit the entire cost to be deducted, and only permitted half, paying Petitioners that amount. Petitioners then deducted the unpaid half from their next month's rent check.

At first, Marcos gave Petitioners a 3-day notice to pay the deducted amount or quit. When Petitioners responded that they had a right to repair and deduct, Marcos did not evict them for non-payment of rent,

but instead gave Petitioners a 30-day notice of termination of tenancy, stating no reason. Petitioners contended that the eviction was in retaliation for their exercise of their right to repair and deduct, and was prohibited under California Civil Code §1942.5.

Marcos filed the unlawful detainer action on March 17, 1997, based upon that 30-day notice. Petitioners planned on having a jury trial.

Due to their indigent status, Petitioners at first appeared *in propria persona* [*pro se*], with legal counsel assisting only in drafting and advice.

All unlawful detainer actions in Glendale are initially set for Division 5, where Bracke presided. As a commissioner under California Constitution Article VI, §21, Bracke had absolutely no jurisdiction

over a matter unless both parties stipulated to her jurisdiction. Petitioners refused to sign the stipulation form conferring jurisdiction on Bracke [Appendix A5]. Instead of sending the matter to a judge as required, Bracke usurped jurisdiction and heard the matter herself.

Bracke not only denied Petitioners' motions, but *sua sponte* imposed monetary sanctions against Petitioner Nazaryan without any legal basis or procedure. [Appendix A6] Bracke also ordered that Petitioners "answer and answer only" after Petitioner Dilanian's motion to quash was denied. Bracke thereby intended to prohibit Dilanian from filing a demurrer to the defective complaint, one expressly permitted by California Code of Civil Procedure

§1170. Simpson did nothing to reverse this error when it was brought to his attention.

California permits sanctions to be imposed only under certain conditions, and then only after a hearing and opportunity to be heard. [Code of Civil Procedure Section 128.7] The grounds are narrowly limited, and they must be stated in the order imposing sanctions. [Appendix A6] Bracke intentionally defied these laws. Simpson again did nothing to reverse the order, when it was brought to his attention.

Nazaryan requested a jury trial in timely fashion, under California Constitution Article I, §16 and California Code of Civil Procedure §1171 [Appendix 4].

California Government Code §68511.3 (a) (6)

(A) and California Rules of Court Rule 985(b) [see Appendix 4], mandated granting the fee waiver application of Petitioner Nazaryan, as a recipient of AFDC and Food Stamps. Bracke had granted Nazaryan's fee waiver application for her initial filing fees. However, when Nazaryan subsequently applied for a waiver of jury fees, also mandatory under California Rules of Court Rule 985(j)(1), Bracke denied that waiver because Nazaryan had help from a lawyer. [Appendix A7] There is no exception to the mandatory fee waivers for the litigant having counsel. Simpson took no action to reverse that decision when it was brought to his attention.

Bracke had granted the prior application, but was now denying the jury fee waiver upon conflicting

grounds. Where there is substantial evidentiary conflict, California Government Code §68511.3(a)(1) and California Rules of Court Rule 985(d) and (f) [Appendix A4] require an evidentiary hearing after 10 days' notice, to determine eligibility. Had there been an evidentiary hearing, the mandatory grant for the fee waiver could have been urged. Bracke permitted no such notice and hearing to challenge her intentional violation of fee waiver laws and court rules, and issued her order. Simpson took no action to reverse this error when so advised.

The order itself was on a California Judicial Council form. [Appendix A7] The form provides that where the fee waiver application is denied, the applicant has 10 days to post the fees which were not

waived, as required by California Government Code §68511.3(a)(2) and California Rules of Court Rule 985(c). Although Nazaryan's fee waiver application was filed on May 9, 1997, Bracke did not rule on it until May 14, 1997. It was purportedly mailed the following day, but with the trial set for May 21, 1997, the 10-day posting period provided on the order would not expire under 4 days after trial was set to start. Petitioner's counsel substituted in for trial on May 21, 1997.

Petitioners filed a formal refusal to stipulate to Bracke, and the matter was transferred to Simpson for trial. Simpson trailed the trial until May 22, 1997, when he announced that the trial would be a court trial, not a jury trial. Simpson had ordered the court

reporter to transcribe those proceedings, apparently related to his intention to charge Petitioner's counsel with contempt for having assisted Petitioners informally. No contempt order resulted, but the reporter transcribed the hearing.

Petitioners' counsel advised the Court that it was a jury trial. Simpson responded that the jury fees had not been timely posted, a type of jury trial waiver established under California Code of Civil Procedure Section 631 [Appendix 4]. Counsel advised the court that a fee waiver had been filed. Simpson responded that Bracke had denied the order.

Simpson then held the file in his hands and read from what he represented was Bracke's order regarding the denial of the jury fee waiver. The

pertinent pages of that transcript are in Appendix A8. Simpson falsely read the order as reading that Bracke had ordered the jury fees to be paid 5 days prior to the date of trial. [Appendix A8, pg 7, at 4-7] Clearly, the order [Appendix A7] says no such thing. Judge Simpson intentionally misrepresented the order for one purpose only: to deny Petitioners their right to a jury trial.

Petitioners' counsel advised Simpson that Bracke's order had not yet been received, but that in any case, the jury fees would be posted that day, donated by Petitioners' counsel. Simpson refused to permit the jury trial even under those circumstances. Simpson continued the trial to June 30, 1997, and Petitioner's counsel did post the jury fees on May 22,

1997, more than 5 days before the new date.

While posting the fees, counsel obtained a copy of Bracke's order denying the fee waiver and thereby learned of Simpson's misrepresentation.

Simpson transferred the trial to another judge, Hon. Laura Matz. Simpson further ordered that if Petitioners' counsel should dare to request a jury trial before her, counsel would be held in contempt of court, a fact of which Judge Matz reminded Petitioners' counsel at the commencement of trial.

The matter proceeded to a court trial where Judge Matz found that no retaliation existed. She evicted Petitioners from their home, and imposed thousands of dollars in damage, plus attorney fees.

Petitioners filed an appeal of the state action,

but arrived at a settlement with Marcos which resolved the merits of the unlawful detainer action, at great sacrifice. The appeal was dismissed.

Prior to the trial of the unlawful detainer, Petitioners sought to remove it to federal court, but the /district Court remanded it. This action was filed simultaneously with that removal petition.

The district court, Hon. William J. Rea, dismissed this action on grounds that Respondents are absolutely immune and that *Younger* abstention bars any injunctive interference with the state court action. On appeal to the Ninth Circuit Court of Appeals on these issues, that dismissal was affirmed but on different grounds.

REASONS FOR GRANTING PETITION

I. Important Questions of Federal Law

Overview

Judicial immunity needs clear outer boundaries. It should neither condone nor protect abuse of judicial powers by trial courts. Qualified immunity is the only way to balance the public's interest in an independent judiciary against their need for the rule of law, itself.

What else can be done? Trust in the integrity of a given judge is sometimes unwarranted. Appeals are an insufficient remedy because reversal on appeal is no disincentive, and the damage to litigants is already done and usually irreparable. More rules and laws will not work, because they too can be ignored. Judicial oversight groups such as California's

Commission on Judicial Performance prove toothless, as here. Only by personal accountability of the individual judge for intentional civil rights violations can the judicial system and the public be satisfied that the trial court will apply the law, not "local-local rules."

a. Importance of the questions

These questions go to the root of the entire legal system. If those charged with applying the law refuse to do so, there is no law, and all of the efforts of this court, other appellate courts and the various legislatures are rendered worthless. Something must be done to restore the rule of law, something not drastic, but sufficient to deter intentional violations of civil rights by trial courts.

This Court has repeatedly recognized the importance of questions of judicial immunity. *Pulliam v. Allen* (1984) 466 US 522, 529, 104 S.Ct. 1970, 80 L.Ed.2d 565; *Mireles v. Waco* (1991) 502 US 9, 112 S. Ct. 286, 116 L.Ed.2d 9; *Stump v. Sparkman* (1977) 435 U.S. 349, 98 S.Ct. 1099 ,55 L.Ed.2d 331. It continues to be an important concern.

Growing public outrage over the conduct of the judiciary also raises the importance of the issue. Books are written on the subject, noting common injustices arising from immunity throughout the former British empire, including the U.S.. Websites are dedicated to this topic. Initiative measures have been launched to bar immunity. The American Judges Association makes immunity one of its main planks.

Three failed bills in Congress have attempted to fortify judicial immunity. Growing numbers of news articles expose the shocking misconduct of judges. Public polls show a rapidly declining respect of the public for judges and for the judicial process.

The underlying rights here are important. California's right to a jury trial is described in its Constitution as "inviolate". California Constitution Art. 1, §16. The right to have a judge, rather than a commissioner, is also constitutional. California Constitution Art. V1, §21. The rights to fee waivers and associated mandatory notice and hearing under California Government Code §68511.3 and California Rules of Court, Rule 985, to file a demurrer under California Code of Civil Procedure §1170, and to the

substantive and its notice and hearing provisions regarding imposition of sanctions under California Code of Civil Procedure §128.7, are also important Due Process rights, smugly obliterated by the Respondents' actions under perceived immunity.

b. These particular issues have not been addressed

1. Whether a judge who intentionally violates a litigant's right to a jury trial is entitled to immunity from civil damages has not been addressed. The closest case is *Ex Parte Virginia* (1879) 100 US 339, 25 L.Ed 676, where a judge who excluded Afro-Americans from a jury was criminally prosecuted. The majority in *Forrester v. White* (1988) 484 US 219, 108 S.Ct. 538, 98 L.Ed.2d 555 interpreted *Ex Parte Virginia* as not being restricted in application

because it was a criminal, not civil, case.

If a judge should be *criminally* prosecuted for mere tampering with the *content* of jury, it is a *nonsequitur* that he should be *immune civilly* for refusing to *permit a jury*, at all? The long line of cases establishing general judicial immunity do not address intentional constitutional jury violations by a judge, nor otherwise distinguish *Ex Parte Virginia*.

Nor has this court finished explaining what the "complete lack of jurisdiction" entails. In California law, a court commissioner "completely lacks jurisdiction" where she fails to first acquire the constitutionally mandated stipulation to her jurisdiction from *both* parties. *Rooney v. Vermont Investment* (1973) 10 Cal. 3d 351 at 360, 110 Cal.

Rptr. 353, 515 Pac. 2d 297; California Constitution Article VI, §21.

2. Is "completely lacks jurisdiction" the same as "clear absence of all jurisdiction", to which the current immunity exception refers? There is scant example of what that term means.

The only example articulated by this Court was in dicta of *Bradley v. Fisher* (1872) 80 US 335 at 352, 20 L.Ed 626, 13 Wall 335, reiterated in *Stump v. Sparkman* (1977) 435 U.S. 349 at 357 (fn.7), 98 S.Ct. 1099 ,55 L.Ed.2d 331: the probate judge who hears a criminal matter. Such a judge who covers for another and acts negligently but in good faith will have no immunity. Is immunity governed by administrative assignment? By that guideline, the commissioner who

acts without the requisite stipulation to her jurisdiction would seem to lack immunity in the same way, having not been "assigned" by the parties' stipulation.

The prior decisions do not, by their facts or rationale, resolve the issues presented by this case. In the most recent case on the topic, *Mireles v. Waco* (1991) 502 US 9, 112 S. Ct. 286, 116 L.Ed.2d 9, the majority of this divided Court accepted the trial judge's alleged order to forcibly drag an attorney into his court as entitled to immunity. The rationale was that, while excessive, it was at least in aid of jurisdiction, bringing the attorney into the courtroom. The three dissenting Justices were not convinced that such abuse was entitled to immunity.

The case at bar is entirely different. Here, none

of the judicial misconduct complained of was in aid of jurisdiction. Nor does this concern the proper application of a law [*later* held unconstitutional], as in *Pierson v. Ray* (1967) 386 US 547, 87 S.Ct. 1213, 18 L.Ed.2d 288. These were not the mere oversights of procedural technicalities of which the trial judge was unaware, as in *Stump v. Sparkman* (1977) 435 U.S. 349, 98 S.Ct. 1099 ,55 L.Ed.2d 331. These were not the discretionary acts of a court of equity, as in *Dennis v. Sparks* (1980) 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185.

3. Is a state's interest in *processing* its court cases alone a sufficient "compelling state interest" under *Younger* abstention to bar federal court 42 USC §1983 *Pulliam* relief against the state judges'

intentional violation of their own state's laws? *Younger v. Harris* (1971) 401 US 37, 91 S.Ct.746, 27 L.Ed.2d 669. The District Court characterized Petitioners' injunctive relief as interfering with the unlawful detainer process of a state court. Yet, the state does not have a compelling interest to misapply, violate, or unequally apply its own laws.

If *Younger* abstention is applied as the District Court ruled, then litigants would be effectively prohibited from ever enjoining state court violations under *Pulliam v. Allen* (supra), because the state would always have a compelling interest to process the type of case at issue. It would preclude any challenge unless the case was moot or unripe, or the party lacked standing, and then those would bar it.

c. This is the proper case to address these issues

The facts of the judicial misconduct at issue are not speculative, but manifest from the papers of record. These are not bare allegations of malice, nor trivial technicalities. What happened was wrong.

The right to a jury itself, is on trial. Does the right exist, or is it only at the whim of the judge whom the jury is designed to replace, as the trier of fact?

The rationale for judicial immunity, preserving an independent judiciary for the public benefit, has no application to intentional violations of litigants' civil rights. An "independent judiciary" should not be independent of the laws they are supposed to apply. No benefit accrues when judges are *that* independent.

The groundwork for the solution is already laid.

From its inception in *Harlow v. Fitzgerald* (1982) 457 US 800, 73 L.Ed.2d 396, 102 S.Ct. 2727, Qualified Immunity has balanced the legitimate needs to protect the government official from undue lawsuits while preserving the rule of law and the public's trust:

> We therefore hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

Harlow, supra, at 457 US 818. There is no reason in law or function why trial judges and commissioners should have, or need, greater immunity than that.

II. The Appeals Decision Is Contrary to Law

The second reason for granting certiorari is that

the Ninth Circuit Court of Appeals' decision is contrary to the accepted and usual course. In its Memorandum affirming the dismissal of the District Court, the Ninth Circuit declared that the District Court lacked subject matter jurisdiction over Petitioner's action because it was an impermissible collateral attack on the adverse rulings in the unlawful detainer. [Appendix 3]

This is a federal question case, applying the Civil Rights Act and the 14th Amendment, petitioning the government for a redress of grievances. This Court has heard several such cases, cited above, and never suggested that the District Court lacked jurisdiction over such cases as a collateral attack. Indeed, in *Pulliam v. Allen* (1984) 466 US 522, 529,

104 S.Ct. 1970, 80 L.Ed.2d 565, this Court expressly enjoined the trial court's conduct.

The Ninth Circuit's conclusion arose from its misunderstanding of this action as a sort of appeal on the *merits* of the unlawful detainer action. The cases it cited to support its decision were inapposite to the one at bar. In *MacKay v. Pfiel* (1987) 827 Fed.2d 540, the party was trying to obtain a different award on the *merits* in equity than the state court has awarded. In *Branson v. Nott* (1995, 9th), 62 Fed 3d 287, the party sought a District Court review on the *merits* of the state appeals court decision to affirm a dismissal for failure to prosecute. This action does not seek any review on the merits nor a different award. Those have been independently resolved. This

action focuses solely on judicial misconduct, liability of the Respondents, and prospective relief as to Simpson's conduct. The Ninth Circuit improperly affirmed the district court's dismissal on that basis.

Conclusion

The Court needs to establish a balance between the legitimate interests at issue, to ensure the proper administration of justice.

WHEREFORE, Petitioners pray that their petition for certiorari be granted.

Respectfully submitted,

Kenneth H. Carlson
Attorney for Petitioners

APPENDIX A1

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF

CALIFORNIA

OFIK NAZARYAN, HENRIK DILANIAN, Plaintiffs, vs. JAMES R. SIMPSON, DONA BRACKE, DOES 1 through 10, inclusive, Defendants.	Case No. 97-4734 WJR (AJWx) ORDER

Defendants' Dona Bracke and James R. Simpson's Motion to Dismiss plaintiffs' complaint came on regularly for hearing before this Court on August 25, 1997. Priscilla F. Slocum of Franscell, Strickland, Roberts and Lawrence appeared as attorney for defendants, and Kenneth H. Carlson appeared as attorney for plaintiffs Ofik Nazaryan and Henrik Dilanian.

NATURE OF ACTION

The federal civil rights action arose out of a state eviction action brought by plaintiffs' landlord in the Glendale municipal court after plaintiffs failed to pay the full amount of their monthly rent of $625.00. Defendants, Commissioner Bracke and Judge Simpson, issued a number of adverse pretrial

rulings against plaintiffs based on state law. However, plaintiffs did not seek appellate or writ review in the California state Court of Appeals. Rather, plaintiffs brought the present civil rights action challenging these adverse rulings under the Due Process and Equal Protection Clauses of the United States Constitution, and California's constitutional right to a jury trial.

On April 3, 1997, plaintiffs filed a demurrer to the unlawful detainer complaint and a motion to quash summons and complaint, and set the hearing on the motions before Commissioner Bracke in Division 5 of the Glendale Municipal Court. On that same day, Bracke held a hearing on plaintiffs' application for waiver of court fees and costs.

Plaintiffs were present at this hearing when Bracke granted the application, and set plaintiffs' motion to quash and demurrer for hearing before her on April 16, 1997. Plaintiffs were further notified by mail that the hearing on their motions would be held in her courtroom.

On April 16, 1997, plaintiffs appeared and participated in the hearing on their motion to quash and demurrer without objecting to Bracke's jurisdiction. Bracke overruled the demurrer, denied the motion to quash, and ordered plaintiffs to "answer and answer alone by 4-21-97." Bracke imposed sanctions against plaintiff Nazaryan in the amount of $175, for filing the motion to quash.

On May 5, 1997, the matter was set for a

court trial on May 21, 1997, before Bracke. On May 14, 1997, Bracke denied plaintiffs' subsequent application for waiver of jury fees because plaintiffs had retained private counsel. Then, on May 21, 1997, plaintiffs, for the first time, objected to Bracke's jurisdiction over the prior pretrial rulings. Plaintiffs' counsel also filed a peremptory challenge to Judge Burke, and the case was transferred on that date to Judge Simpson.

On May 22, 1997, the case was called for trial before Judge Simpson. Simpson advised plaintiffs that their application for jury fees was denied because plaintiffs had represented that they were indigent, yet had hired private counsel to ghost-write the numerous motions which preceded

the May 22, 1997 hearing. Simpson refused to permit plaintiffs to file jury fees because the time for doing so had expired, and the trial was reset for hearing before Simpson on June 6, 1997.

On June 4, 1997, plaintiffs filed an objection to the case proceeding without a jury trial, and moved to disqualify Judge Simpson for cause on June 4, 1997. Simpson stayed all further proceedings until the motion for disqualification could be heard. After the disqualification motion was referred to the judicial council for the selection of a judge to hear the motion, Judge Fredricks denied the motion to disqualify Judge Simpson. On June 18, 1997, the parties were notified that a new trial date was set for June 30, 1997, before

Simpson. However, on June 30, 1997, the trial was called for trial before Judge Matz. The matter was ordered off calendar because plaintiffs had filed a Motion to Remove the unlawful detainer action to federal court on June 27, 1997.

NATURE OF THE MOTION

Plaintiffs' complaint alleges that the foregoing adverse rulings, all of which were based on state law, violated their rights under the Due Process and Equal Protection Clauses of the United States Constitution, and their rights to a jury trial under the California Constitution. For these alleged violations, plaintiffs seek damages and injunctive and declaratory relief requiring Bracke and Simpson to permit a jury trial, to grant plaintiffs'

waiver of jury fees, and to declare that plaintiffs rights have been violated. (Complt., 11-12.) Plaintiffs also seek sweeping injunctive and declaratory for future litigants, and essentially ask this court to regulate and supervise the defendant judicial officers in all future proceedings.

In their motion to dismiss, defendants argue that the motion to dismiss should be granted because they are entitled to absolute judicial immunity, and that under Younger v. Harris, this court must abstain from interfering with the ongoing state unlawful detainer action.

As discussed herein, Bracke and Simpson have absolute immunity against plaintiffs' civil rights action for damages. Moreover, under

Younger v. Harris ("Younger"), 401 U.S.37, 43-44, 91 S. Ct. 746, 750, 27 L. Ed. 2d 669 (1971) this court will not interfere with the pending state court proceeding through injunctive or declaratory relief.

DISCUSSION

A. Motion to Dismiss vs. Summary Judgment

In addition to basing their motion to dismiss upon plaintiffs' pleadings, defendants also provide, and rely upon in part, several documents of public record relating to the underlying municipal court action. This is entirely appropriate, and does not convert defendants' motion to dismiss into a summary judgment motion, contrary to plaintiffs' assertion. Indeed, it is well settled that, in addition

to the allegations of the complaint itself and any exhibits attached to the complaint, a court may, upon a motion to dismiss, take judicial notice of matters of public record, including other pleadings and papers filed with the instant court, or with other courts. See, MGIG Indemnity Corp. v. Weisman, 803 F.2d 500,504 (9th Cir. 1986). Hence, defendants' use of matters of public record and its request for judicial notice as to those matters in no way affects the status of the instant motion as a motion to dismiss.

B. Standard for Judicial Immunity

The standard for judicial immunity has been very well settled both by the Supreme Court of the United States and the Ninth Circuit for quite some

time. In the face of this well settled precedent, plaintiffs launch what appears to be a two pronged attack. First, plaintiffs essentially attempt to rewrite the case law, even going so far as to suggest that the issue presented is "really one of first impression." Opposition at 14. Second, and utterly inconsistent with their first approach, plaintiffs appear to concede the strength of the absolute judicial immunity doctrine, and even to concede the Supreme Court's holding that 42 U.S.C.§ 1983 does not alter the common law doctrine of absolute judicial immunity, but urge this Court to revisit the issue, asserting that "[t]here is no reason why qualified immunity as it is currently defined cannot suffice for the concerns of the judiciary."

Opposition at 17. These arguments are woefully misguided, as the Supreme Court has made unequivocally clear the standard for absolute judicial immunity, and as the federal district courts are in no position to"revisit" or to "overrule" well established precedent of the Supreme Court and the Ninth Circuit.

The Supreme Court made clear the standard for judicial immunity, and the limited scope of the exceptions thereto, as recently as 1991. In Mireles v. Waco, 502 U.S. 9 (1991)(per curiam), the Court held that judges are absolutely immune from civil liability for damages for their judicial acts, and that judicial immunity is overcome only if the judge acts outside the judge's judicial capacity or in the

complete absence of all jurisdiction. Id. at 9-12. This absolute immunity also extends to claims for declaratory, injunctive or other equitable relief arising from their judicial acts. Moore v. Brewster, 96 F. 3d 1240, 1243 (9th Cir. 1996); Atkinson-Baker & Associates, Inc. v. Kolts, 7 F.3d 1452, 1454 (9th Cir. 1993)(per curiam); Mullis v. U.S. Bankruptcy Court, 828 F.2d 1385, 1388, 1391-92 (9th Cir.1987).

Furthermore, despite plaintiffs' frequent invocation of the dissent in Pierson v. Ray, 386 U.S. 547 (1967), the fact remains that the Supreme Court in Pierson made unequivocally clear that 42 U.S.C. § 1983 does not alter or abolish absolute judicial immunity. Ld. at 554-555. Plaintiffs'

reliance upon Ex Parte Virginia , 100 U.S. 339, cited in Justice Douglas' dissent in Pierson, is equally unavailing. Whatever the possible implications of Ex Parte Virginia , the Supreme Court has since made clear that those implications can not and do not extend beyond the limited scope of exceptions to judicial immunity of actions taken outside of the judicial role, and actions taken in the clear absence of all jurisdiction. See, Mireles ,502 U.S. at 9-12; Pierson, 386 U.S. at 554.[1]

The Ninth Circuit, whose interpretation of

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[1]Plaintiffs' invocation of an alleged additional exception for "administrative decisions is in fact nothing more than one example of a circumstance in which an act is "taken not in [the judge's] judicial capacity". See, Opposition at 11

Supreme Court precedent binds this Court, has carefully followed Pierson's immunity even where "the action he took was in error, was done maliciously, or was in excess of his authority." Mullis v. U.S. Bankruptcy Court, 828 F.2d 1385, 1388 (9th Cir.1987) (citation omitted) (emphasis added). This immunity further applies "'no matter how injurious in its consequences it may have proved to the plaintiff.'" Moore v. Brewster, 96 F.3d 1240, 1243 (9th Cir. 1996) (citation omitted). Clearly, this precedent flies in the face of plaintiffs' characterization of the issue as "one of first impression, given plaintiffs' allegations as to Judge Simpson's purported malice.

C. Applicability of Judicial Immunity Doctrine to Simpson Allegation

1. Judicial Acts.

The first part of the immunity inquiry is whether the complaint alleges that Judge Simpson engaged in something other than judicial acts. A plaintiff's conclusory allegations that the judge acted outside his or her judicial capacity are not enough to survive a motion to dismiss. Lonneker Farms. Inc. v. Klobucher, 804 F.2d 1096, 1097 (9th Cir. 1986).

"Judicial acts" are those "involving the performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights." Atkinson-Baker, 7 F.3d at 1454

(citation omitted).

In this case, it is clear that plaintiffs' allegations relate solely to judicial acts engaged in by Judge Simpson. Specifically, plaintiffs complain of Simpson's "refus[al] to address or correct," as presiding judge, the alleged misconduct of Commissioner Bracke. Complaint at ¶53. Ultimately, however, plaintiffs' primary complaint against Simpson regards Simpson's denial of a jury trial to plaintiffs. Complaint at ¶61. Plaintiffs further complain that "Simpson has refused to recuse himself for bias, notwithstanding his intentional deprivation of Plaintiffs' Constitutional rights and misrepresentation." Complaint at ¶65.

Plaintiffs complain, in short, that in presiding

over the underlying state case, and particularly in determining whether or not plaintiffs were entitled to a jury trial, Judge Simpson intentionally and maliciously disregarded legal precedent and ruled against plaintiffs.Under the standard for judicial immunity enunciated above, these acts, even if malicious, are clearly protected as judicial acts engaged in in Judge Simpson's capacity as a judge.

2. Subject Matter Jurisdiction

The second part of the immunity inquiry is whether the alleged act that Judge Simpson performed was in the "clear absence of all jurisdiction." See, Mullis, 828 F.2d at 1388. For purposes of judicial immunity, "[a] clear absence of all jurisdiction means a clear lack of subject matter jurisdiction."

Id. at 1389.

Judicial immunity does not disappear as to those acts taken "in excess" of the judge's authority, but only as to those acts taken in the clear absence of all jurisdiction. See, Mireles, 502 U.S. at 13, Mullis, 828 F.2d at 1388, 1389.

Judge Simpson is a municipal court judge who was presiding over a state law matter concerning landlord-tenant issues. Plaintiffs do not really dispute the existence of subject matter jurisdiction, nor can such jurisdiction reasonably be disputed. Instead, plaintiffs essentially argue that Judge Simpson overstepped the bounds of fair adjudication by allegedly acting with malice and with disregard of legal precedent. Such acts are still

protected under the immunity doctrine, as discussed above. Furthermore, such allegations in no way speak to a lack of subject matter jurisdiction over the underlying case.

D. Application of Judicial Immunity Doctrine to Bracke Allegation .

1 . Subject Matter Jurisdiction .

The primary thrust of plaintiffs' argument challenging Bracke's judicial immunity concerns plaintiffs' allegation that Bracke lacked subject matter jurisdiction over the underlying state case, as plaintiffs had not stipulated to Bracke's presiding over the matter.

Article VI, § 21 of the California Constitution provides that: On

> stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until a final determination of the cause.

It is well established, however, that neither an express oral nor a written stipulation is required if a party's conduct is tantamount to a stipulation that the court commissioner may sit as a temporary judge. Estate of Soforenko , 260 Cal.App.2d 765, 767 (1968; People v. Oaxaca, 39 Cal.App.3d 153, 161 (1974).

Furthermore, the determination of jurisdiction is itself "a judicial duty, and error in

such determination is itself within the rule of immunity." Lewis v. Linn, 209 Cal. App.2d 394, 398 (1962). Ordinarily, "if any reasonable ground for the assumption of jurisdiction is shown, the immunity applies." Id. Hence, the only inquiry to be made is whether, given the fact that a party's conduct may be tantamount to stipulation, plaintiffs' complaint and/or the materials subject to this Court's judicial notice are such as to indicate that Bracke had a"reasonable ground" to believe that plaintiffs' conduct entitled her to take jurisdiction.

Indeed, plaintiffs' complaint, along with the materials of which this Court can properly take judicial notice, clearly establish as much. Specifically, it is established that plaintiffs filed a

demurrer to the underlying state court complaint and set the motion for hearing on the demurrer and motion to quash before Bracke in Division 5 of the Glendale Municipal Court. See Request for Judicial Notice to exs. B & C, pp. 21, 22. On that day, Bracke held a hearing on plaintiffs' application for waiver of court fees and costs. Plaintiffs were present and did not object to Bracke's jurisdiction when she granted the application and set plaintiffs' motion to quash and demurrer for hearing before her on April 16, 1997. Id. at ext. D, p. 29. Plaintiffs were also notified that the hearing on the motion to quash and demurrer were set before Bracke in Division 5. Id. at ex. D, p. 29, ext. E, p. 30, ext. F, p.31.

Additionally, on April 16, 1997, plaintiffs appeared and participated in the hearing on their motion to quash and demurrer without objecting to Bracke's jurisdiction. Id. at ex. G, p. 32; Complaint, 4:8-16. Bracke overruled the demurrer, denied the motion to quash, and ordered plaintiffs to answer and answer alone by 4-21-97." Id. at ext. G, p. 32; Complaint, 4:28-5: 1. Bracke imposed sanctions against plaintiff Ofik Nazaryan in the amount of $175, for filing the motion to quash. Id. at ex. G, p. 32; Complaint at 4:14-16. Plaintiff Nazaryan did not challenge Bracke's jurisdiction, but appealed the sanctions award on May 1, 1997. Complaint at 4:25-27.

In light of these circumstances, there is no

question that Bracke had a "reasonable ground" to believe that the parties had effectively submitted to her jurisdiction. Hence, absolute immunity attaches for any judicial acts taken by Bracke pursuant to this jurisdiction.[2]

2. Judicial Acts.

As outlined above, the acts of which plaintiffs complain involve Bracke's taking jurisdiction in the first place, an act which is itself "a judicial duty," Lewis, 209 Cal.App.2d at 398,

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[2]Furthermore, despite plaintiffs' protests that Commissioner Bracke "took advantage" of the pro per status of plaintiffs, our conclusion, through not reliant upon this fact, is actually bolstered by Judge Simpson's finding, itself a matter of public record, that plaintiffs had effectively been represented by counsel all along.

and further involve Bracke's imposition of sanctions, denial of a motion to quash, Bracke's ordering Nazaryan to "answer and answer only", and Bracke's handling of a fee waiver application with regard to a request for jury trial. Complaint of 1123-48. Clearly, these are all judicial acts, regardless of plaintiffs' sentiments as to the wisdom of or motivation for the acts. Hence, absolute judicial immunity applies.

E. Abstention under Younger v. Harris.

Under Younger, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971), abstention by a federal district court is required in favor of state judicial proceedings is required if the state proceedings (1) are ongoing, (2) implicate important state interests,

and (3) provide the plaintiff an adequate, unbiased opportunity to litigate federal claims. Hirsch v. Justices of the Supreme Court, 67 F.3d 708, 712 (9th Cir. 1995). All of these three requirements have been met in the present case. Therefore, the motion to dismiss plaintiffs' equitable relief claims is also granted on grounds of the Younger abstention doctrine.

CONCLUSION

After considering the moving and opposition papers, arguments of counsel, evidence and all other matters properly presented to this Court, IT IS HEREBY ORDERED that the motion to dismiss plaintiffs' complaint is GRANTED, with prejudice.

DATED: Sept. 12, 1997

/s/

William J. Rea

Judge, United States District Court

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF

CALIFORNIA

OFIK NAZARYAN, HENRIK DILANIAN, Plaintiffs, vs. JAMES R. SIMPSON, DONA BRACKE, DOES 1 through 10, inclusive, Defendants.	Case No. 97-4734 WJR (AJWx) JUDGMENT

Defendants Commissioner Dona Bracke and Judge James R. Simpson's Motion to Dismiss Plaintiffs' Complaint came on regularly for hearing on August 25, 1997, before the Honorable Judge William J. Rea. Priscilla F. Slocum of Franscell, Strickland, Roberts & Lawrence appeared as attorney for defendants Dona Bracke and James R. Simpson. Kenneth H. Carlson appeared as attorney for plaintiffs Ofik Nazaryan and Henrik Dilanian.

the Court, after reading and considering all of the evidence and arguments presented by the parties and their counsel, granted said motion to dismiss with prejudice. Therefore, pursuant to rule 12(b)(6) of the Federal Rules of Civil Procedure,

IT IS HEREBY ORDERED, ADJUDGED

AND DECREED, that judgment be entered in favor of defendants Commissioner Dona Bracke and Judge James R. Simpson, and against plaintiffs Ofik Nazaryan and Henrik Dilanian, and that plaintiffs complaint is dismissed with prejudice.

DATED : Sept. 12, 1997

/s/

William J Rea

Judge, United States District Court

APPENDIX A2

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

OFIK NAZARYAN, HENRIK DILANIAN, Plaintiffs, vs. JAMES R. SIMPSON, DONA BRACKE, DOES 1 thru 10, inclusive, Defendants.	NO. CV 97-4734 WJR (AJWx) ORDER ON MOTION FOR RELIEF FROM FILING LATE APPEAL DATE: DECEMBER 8, 1997 TIME: 10:00 AM ROOM: 220 [HON.

WILLIAM J. REA]

TO THE PARTIES AND THEIR COUNSEL OF RECORD:

Upon Plaintiffs' motion for relief from filing a late appeal heard regularly before this Court on December 8, 1997 at 10:00 AM in Courtroom 220, Kenneth H. Carlson appearing for Plaintiffs and Priscilla Slocum appearing for Defendants, the Court found finds that Plaintiffs' counsel did not receive notice of entry of the order dismissing this action.

IT IS ORDERED that Plaintiffs' Notice of Appeal is deemed timely filed, and that Plaintiffs' counsel give notice of ruling.

/s/ DATED: 12/22/97

HON. JUDGE WILLIAM J. REA

U.S. DISTRICT COURT

APPENDIX A3

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OFIK NAZARYAN; HENRIK DILANIAN, Plaintiffs-Appellants, v. JAMES R. SIMPSON, Judge; DONA BRACKE, Defendants.-Appellees.	NO. 97-56591 D.C. No. CV 97-4734 WJR MEMORANDUM*

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

Appeal from the United States District Court for the Central District of California William J. Rea, District Judge, Presiding

Submitted October 20, 1998**

Before:T.G. NELSON, KLEINFELD, and HAWKINS, Circuit Judges.

Ofik Nazaryan and Henrik Dilanian ("plaintiffs") appeal the district court's dismissal of their 42 U.S.C. § 1983 action alleging that defendants violated their constitutional rights by rendering adverse rulings against them in an underlying atate court unlawful detainer action in

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** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a); 9th Cir. R. 34-4. Accordingly, Nazaryan and Dilanian's motion for oral argument is denied.

which defendants presided. The district court detennined that defendants were entitled to judicial immunity and dismissed the complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(6). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, see *Franceschi v. Schwartz*, 57 F.3d 8285 830 (9th Cir. 1995) (per curiam), and may affirm on any basis supported by the record, see *Branson v. Nott*, 62 F.3d 287, 291 (9th Cir. 1995). We affirm.

Upon our independent obligation to raise jurisdictional issues sua sponte, see *MacKay v. Pfeil*, 827 F.2d 540, 542 (9th Cir. 1987) (per curiam), we conclude that the district court's dismissal was proper because the court lacked

subject-matter jurisdiction over plaintiffs' impermissible collateral attack on defendants' adverse judicial rulings in the unlawful detainer action, see *Branson*, 62 F.3d at 291-92; *MacKay*, 827 F.2d at 543-45.

We deny Appellees' request for judicial notice and motion for sanctions. We also deny Appellants' request for judicial notice.

AFFIRMED.

APPENDIX 4

PROVISIONS PRESENTED

[Highlighting and footnotes added, irrelevant portions omitted]

14th Amendment to the U.S. Constitution

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.** ...

Section. 5. **The Congress shall have power to enforce, by appropriate legislation, the provisions of this article**.

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42 U.S.C. §1983. Civil action for deprivation of rights

Every person who, **under color of any statute, ordinance, regulation, custom, or usage, of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any** citizen of the United States or other **person within the jurisdiction** thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable** to

the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Federal Rules of Appellate Procedure, Rule 4(a): Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or

order appealed from is entered. ...

(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) that party shows excusable neglect or good cause.

California Constitution Art. 1, §16:

Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be

waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

California Code of Civil Procedure §1161: Unlawful Detainer

A tenant of real property, for a term less than life, or the executor or administrator of his or her estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer:

5. When he or she gives written notice as

provided in Section 1946 of the Civil Code of his or her intention to terminate the hiring of the real property, or makes a written offer to surrender which is accepted in writing by the landlord, but fails to deliver up possession at the time specified in that written notice, without the permission of his or her landlord, or the successor in estate of the landlord, if any there be.

California Code of Civil Procedure § 1171:

Jury Trial for unlawful detainer

Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in

the court in which the action is pending.

California Code of Civil Procedure § 631:

Waiver of Jury Trial

(a) Trial by jury may be waived by the several parties to an issue of fact in any of the following ways: ...

(5) By failing to deposit with the clerk, or judge, advance jury fees 25 days prior to the date set for trial, except in unlawful detainer actions where the fees shall be deposited at least five days prior to the date set for trial, or as provided by subdivision (b). The advanced jury fee shall not exceed the

amount necessary to pay the average mileage and fees of trial jurors for one day in the court to which the jurors are summoned.

...

California Constitution Art. 6, §21

[Commissioners require stipulation to judge]

On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause.

California Government Code §68511.3:

Requirements for Fee Waiver Applications

(a) The Judicial Council shall formulate and adopt uniform forms and rules of court for litigants proceeding in forma pauperis. **These rules shall provide for all of the following**:

(1) **Standard procedures for considering and determining applications for permission to proceed in forma pauperis**, including, in the event of a denial of such permission, a written statement detailing the reasons for denial and **an evidentiary hearing** where there is a substantial evidentiary conflict.

(2) **Standard procedures to toll relevant time limitations when a pleading or other paper accompanied by such an application is timely lodged with the court and delay is**

caused due to the processing of the application to proceed in forma pauperis.

(3) **Proceeding in forma pauperis at every stage of the proceedings** at both the appellate and trial levels of the court system.

...

(6) **That permission to proceed in forma pauperis be granted to all of the following**:

(A) **Litigants who are receiving benefits pursuant to** the Supplemental Security Income (SSI) and State Supplemental Payments (SSP) programs (Sections 12200-12205 of the Welfare and Institutions Code), **the Aid to Families with Dependent Children (AFDC)**

program (42 U.S.C. Sec. 601 et seq.), the Food Stamp program (7 U.S.C. Sec. 2011 et seq.), or Section 17000 of the Welfare and Institutions Code. ...

California Rules of Court, Rule 985:

Permission to Proceed Without Paying Court Fees and Costs (In Forma Pauperis)

(a) [Application] An application to proceed in forma pauperis shall be in the form prescribed by rule 982(a)(17). An application for waiver of additional court fees and costs under subdivision (j) shall be in the form prescribed by rule 982(a)(20). The clerk shall provide the form without charge to

any person who requests it or indicates that he or she is unable to pay any court fee or cost. The clerk shall immediately file an application and any pleading or other paper presented by the applicant prior to any order denying the application. Adopted Jan. 1, 1981; amended July 1, 1982; Jan. 1, 1983.

(b) [Eligibility] **The application under rule 982(a)(17)[3] shall be granted and payment of court fees and costs listed in subdivision (i) shall be waived if the applicant meets the standards of eligibility established by subdivision (a)(6)(A) or (a)(6)(B) of Government Code section**

---

[3](17) Application for Waiver of Court Fees and Costs

68511.3. The application under rule 982(a)(20)[4] shall be granted and payment of those court fees and costs listed in subdivision (j)[5] that the court finds necessary shall be waived if the applicant meets the standards of eligibility established by subdivision (a)(6)(A) or (a)(6)(B) of Government Code section 68511.3. Any other order granting the application under that section or otherwise may waive payment of part or all of the fees and costs and may provide that a lien exists on any money recovered by the applicant for any waived fees and costs, which shall be deemed to be taxable costs.

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[4](20)Application for Waiver of Additional Court Fees and Costs [includes jury fees]

[5]See subsection (j) below, specifies jury fees as among the mandatory waivers

The court may authorize the clerk of the court, county financial officer, or other appropriate county officer to make reasonable efforts to verify the litigant's financial condition.

...

(c) [Pleading or Paper Submitted for Filing] The application shall be determined without regard to the applicant's pleading or other paper filed, if any. **If the application is denied, any paper filed without payment of fees is ineffective unless the fees are paid within ten days after notice is given by the clerk pursuant to subdivision (d). If the fees are paid after ten days, the date the applicant's pleading or other paper was originally presented to the clerk is the date for**

determining whether the action or proceeding was commenced within the period provided by law. Adopted Jan. 1, 1981.

(d) [Procedure for Determining Application] The court shall consider and determine the application in accordance with Government Code section 68511.3. An order determining an application for in forma pauperis status shall be in the form prescribed by rule 982(a)(18). An order denying the application, in whole or in part, shall include a statement of reasons as required by Government Code section 68511.3. The clerk shall forthwith mail or deliver a copy of the order to the attorney for the applicant or, if no attorney, to the applicant if the application is not

granted in full and, if the application is denied, to each other party who has appeared in the action or proceeding.

The court may delegate to the clerk in writing the authority to grant applications that meet the standards of eligibility established by subdivision (a)(6)(A) or (a)(6)(B) of section 68511.3 of the Government Code. The court may not delegate authority to deny an application. Adopted Jan. 1, 1981; amended July 1, 1981; Jan. 1, 1987.

(e) [Application Granted After Five Court Days] The application is granted unless acted upon by the court within five court days after it is filed. If the application is granted by operation of this

subdivision the clerk shall execute a Notice of Waiver of Court Fees and Costs in the form prescribed by rule 982(a)(19). Adopted Jan. 1, 1981; amended July 1, 1981.

(f) **[Hearing] If the court determines within five court days after the application is filed that there is substantial evidentiary conflict concerning the applicant's eligibility for in forma pauperis status, the clerk shall promptly give the applicant no less than ten days' written notice of a hearing.** To ensure confidentiality of the applicant's financial information the hearing shall be held in private and the court shall exclude all persons except court attaches, the applicant, those present with the applicant's consent, and any

witness being examined..

...

(i) [Court fees and costs waived by initial application] Court fees and costs waived upon granting an application under rule 982(a)(17) include, but are not limited to, the following:

(1) Clerk's fees for filing papers;

...

(j) [Additional Court Fees and Costs Waived] The court fees and costs that may be waived upon application under rule 982(a)(20) include:

(1) Jury fees and expenses;

..

APPENDIX 5

See lodged Document:

Proposed Stipulation of April 16, 1998

for Bracke to act as Commissioner-Judge Pro Tem

APPENDIX A6

MUNICIPAL COURT OF THE GLENDALE JUDICIAL

DISTRICT (-19450- 1

600 EAST BROADWAY, GLENDALE, CA 91206-4304

Telephone: (818) 500-3538

MARCOS, SAMMI vs. NAZARYAN, OFIK

Case Number: GLN 97CO0724

MINUTE ORDER AND CLERK'S NOTICE OF RULING

AND/OR APPEALABLE ORDER

Court convened at 10:30 AM, on 04/16/97; in Division 005 .

Present: Honorable DONA BRACKE, COMMISSIONER,

Judge/Comm. Presiding.

Stipulation and order appointing temporary judge signed and filed.

GAIL J. BOON , Deputy Clerk;

and the following proceedings were had; notice given per section CCP 664.5:

Plaintiff(s) MARCOS, SAMMI appearing by

DAVID A. MANS

Defendant(s) NAZARYAN, OFIF AND DILANIAN,

HENRIK appearing by

BOTH IN PRO PER

NATURE OF PROCEEDINGS: CAUSE CALLED FOR HEARING RE: DEMURRER TO COMPLAINT AND DEFENDANT DILANIAN'S MOTION TO QUASH.

DISPOSITION: DEMURRER IS OVERRULED. MOTION TO QUASH IS DENIED. DEFENDANT'S ARE TO ANSWER AND ANSWER ONLY BY 4-21-97. THE CLERK'S OFFICE IS ORDERED NOT TO ACCEPT ANY OTHER FILINGS ACCEPT AN ANSWER. SANCTIONS AS TO OFIK NAZARYAN IN THE AMOUNT OF $175.00 TO BE PAID TO PLAINTIFFS COUNSEL BY 5-7-97.

The foregoing minutes are correct.

GAIL J. BOON Deputy Clerk

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that I am the Clerk of this Court, not a party to this cause; that I served a copy of this NOTICE on the below date, by placing a copy thereof in separate sealed envelope(s) addressed to:

DAVID A. MANS

ATTORNEY AT LAW

1111 SOUTH ARROYO PARKWAY SUITE 420

PASADENA, CA 91105

DILANIAN, HENRIK

1470 E. WILSON AVE. #112

GLENDALE, CA

NAZARYAN, OFIK

1470 E. WILSON AVE. #112

GLENDALE, CA

at the address shown by the records of this court, and by then sealing said envelope(s) and depositing same with postage prepaid thereon, in the United States mail at GLENDALE, CALIFORNIA.

LINDA L. LARSEN, Court Administrator/Clerk

Dated: 04/16/97 By GAIL J. BOON Deputy

APPENDIX 7

See lodged Document:

Bracke Order of May 14, 1997

APPENDIX A8

[June 22, 1997 Transcript page 7 lines 4-7, Judge Simpson claiming to be reading the Order, Apprneix A6]

THE COURT: IT MERELY READS, "I ORDER THE APPLICATION IS DENIED FOR THE FOLLOWING REASONS: DEFENDANT HAS PRIVATE COUNSEL. JURY FEES MUST BE POSTED FIVE DAYS PRIOR TO THE DATE OF TRIAL."

[June 22, 1997 Transcript page 17, line 20 to page 18, line22, Judge Simpson denying the fee waiver hearing, a jury trial, and permission to pay the denied fees that day to have the jury trial]

MR. CARLSON:ABOUT THE FEE WAIVER

HEARING.

THE COURT:YES.

MR. CARLSON:MY CLIENT WOULD STILL LIKE ONE IF THE PRELIMINARY DETERMINATION OF THE COURT WOULD BE CONSISTENT WITHCOMMISSIONER BRACKE'S FINDING. BUT UNDER 985(F), WE WOULD LIKE A HEARING. PERHAPS WE CAN SET THAT ON THE SAME DATE.THAT WOULD GIVE US THE TEN DAYS NOTICE AND ALSO AN OPPORTUNITY TO PRESENT WHATEVER EVIDENCE THE COURT WOULD FIND TO BE RELEVANT.

MR. MANS: YOUR HONOR, THIS MATTER HAS BEEN RULED ON BY THIS COURT. IF MR.

CARLSON HAS A PROBLEM WITH IT, HE SHOULD BRING IT UP WITH THE COURT OF APPEALS. IT'S BEEN CLEARLY RULED ON BY COMMISSIONER BRACKE AND NOTICE SENT OUT. THE COURT: THAT'S THE WAY I READ THE FILE. MR. MANS: I DON'T THINK THAT IS PROPER.

THE COURT: I AGREE.

MR. CARLSON: THE COURT IS DENYING US A HEARING?

THE COURT: AT THIS TIME, YES.

MR. CARLSON: WOULD WE BE PERMITTED TO PAY THE JURY FEES ANYWAY?

MR. MANS: ~NO, YOUR HONOR. THIS CASE WAS SET FOR TRIAL ON MAY 21ST.

THE COURT: WE'RE NOW DOWN FOR COURT TRIAL.

MR. MANS: THEY WERE GIVEN NOTICE THAT THAT WAS DENIED AND FIVE DAYS TO PAY THEM AND THEY DID NOT. THE COURT TRIAL IS -- THE ORIGINAL SETTING OF MAY 21ST IS WHEN THEY HAD TO POST THE JURY FEES.

MR. CARLSON: SO WE'LL NOT BE ALLOWED TO HAVE A HEARING AND NOT BE ALLOWED TO PAY THE FEES EVEN -- I CAN'T ADVANCE IT OUT OF MY OWN POCKET SO THEY CAN HAVE A JURY TRIAL?

THE COURT: THAT'S CORRECT.